

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 23, 2016 at 1:30 P.M.

1. [15-21802](#)-C-13 CHARLES WILLIAMS MOTION FOR RELIEF FROM
APN-1 Mikalah Liviakis AUTOMATIC STAY
1-21-16 [[59](#)]
SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2016. Twenty-eight days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Santander Consumer USA, Inc. seeks relief from the automatic stay with respect to a 2013 Dodge Journey, Vehicle Identification Number 3C4PDCBB5DT540763. The moving party has provided the Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has missed five post-petition payments. Debtor has stated his intent to surrender possession of the vehicle pursuant to the Modified Plan filed on 10/21/15. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$28,263.51 while the value of the property is determined to be \$17,473.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Santander Consumer USA, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Santander Consumer USA, Inc., its agents, representatives, and successors, to exercise any and all rights arising under the security interest and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the 2013 Dodge Journey, Vehicle Identification Number 3C4PDCBB5DT540763.

No other or additional relief is granted.

2. [12-40948](#)-C-13 STEVEN/GINA SERIO
MRG-1 W. Steven Shumway

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-1-16 [[78](#)]

U.S. BANK, N.A. VS.

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The for Relief from the Automatic stay is granted.

Creditor, U.S. Bank, N.A. as Trustee for Stanwich Mortgage Loan Trust, Series 2011-4, seeks relief from the automatic stay with respect to the real property commonly known as 5000 Silverhawk Way, Auburn, California. The moving party has provided the Declaration of Irissa Staggers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Staggers Declaration states that the Debtor has not made 5 post-petition payments, with a total of \$12,402.65 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$541,280.61 (including \$425,842.61 secured by movant's first trust deed), as stated in the Staggers Declaration, while the value of the property is determined to be \$440,000, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Creditor, U.S. Bank, N.A. as Trustee for Stanwich Mortgage Loan Trust, Series 2011-4, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Creditor, U.S. Bank, N.A. as Trustee for Stanwich Mortgage Loan Trust, Series 2011-4, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5000 Silverhawk Way, Auburn, California.

No other or additional relief is granted.

3. [16-20274](#)-C-13 ALEXANDER MOLITVENIK
CPG-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-9-16 [[24](#)]

ALDEA HOMES, INC. VS.

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion for Relief from the Automatic stay is granted.
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Creditor, Aldea Homes Inc. and TKR Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2004 Two Towers Way, Rocklin, California (the "Property"). The moving party has provided the Declarations of Ranae C. Murray, Ionita Aldea, and Edward Kring to introduce evidence.

Debtor filed this bankruptcy on January 19, 2016. On January 20, 2016, trustee under the deed of trust sold the Subject Property at foreclosure sale to Creditor, who recorded it in the official records of Placer County on January 25, 2016. Exhibit 1, Dckt. 26. Creditor paid the sum of \$420,000 to agent for trustee in certified funds, Exhibit 3, Dckt. 26. On January 25, 2016, Movant received notice of the bankruptcy. The foreclosure trustee also did not receive notice of the bankruptcy until January 25, 2016.

Movant presents evidence that Debtor Alexander Molitvenik is the trustor under a deed of trust securing payment of a promissory note in the amount of \$411,250, encumbering Subject Property. The amount owing under the foreclosing deed of trust as reflected in Notice of Trustee's Sale is \$676,768.07. The value of the property is estimated to be \$540,000 for negative equity of \$136,768.07.

Movant here moves the court to order that the automatic stay be annulled as such stay applied to the foreclosure sale conducted on January 20, 2016, relating to the Property, which was declared sold as to Movants.

Movant further seeks relief from stay to obtain possession of the subject property.

CHAPTER 13 TRUSTEE

On February 17, 2016, Chapter 13 Trustee filed a statement of non-opposition.

DISCUSSION

Movant seeks relief from the automatic stay with respect to the real property commonly known as 2004 Two Towers Way, Rocklin, California (the "Property"). Movant has provided the Declarations of Ranae C. Murray, Ionita Aldea, and Edward Kring to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$676,768.07, as stated in the Declarations. The value of the Property is determined to be \$488,359, as stated in Schedules A and D filed by Debtor.

Movant seeks retroactive relief of the automatic stay for its trustee's sale in this case pursuant to *In re National Environmental Waste Corp.*, 129 F.3d 1052 (9th Cir. 1997) and *In re Fjeldsted*, 293 B.R. 12 (B.A.P. 9th Cir. 2003). Movant alleges that Debtor engaged in inequitable conduct because Debtor and the co-owners of the Property did not give notice of the bankruptcy to the foreclosure trustee or Movants until after the foreclosure sale. In addition, Debtor and wife have filed previous bankruptcies since 2012 that have delayed completion of foreclosure proceedings that began in 2012 with the recording of a Notice of Default. The court docket reflects that Debtor Alexander Molitvenik has filed three bankruptcy cases: (1) 10-43445; (2) 13-32961; and (3) 15-26950. These cases were dismissed for, among other things, failure to provide necessary documents and failure to appear at 341 meetings. Debtor's spouse Tatyana Molitvenik filed a chapter 13 case in 2012, 12-39938. That case was dismissed for failure to provide necessary information (tax documents, pay advices) and failure to appear at 341 meeting.

The court will render its decision upon hearing the arguments of the parties on February 23, 2016.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Aldea Homes Inc. and TKR Properties, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are
